

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HERBERT LONG,

Plaintiff,

-against-

9:07-CV-268
(LEK/GJD)

D. KLOSE, *et al*,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on March 5, 2008 by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 34). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Herbert Long, which were filed on March 12, 2008. Objections (Dkt. No. 35).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Plaintiff’s claims are barred by collateral estoppel in that the identical claims were decided

in an earlier state court proceeding and there was a full and fair opportunity to contest that decision. See Giakoumelos v. Coughlin, 88 F.3d 56, 59 (2d Cir. 1996). Plaintiff points out that monetary relief is available pursuant to a Section 1983 suit, but not the article 78 state proceeding. Accordingly, Plaintiff is entitled to bring his claims for damages, but “the correct application of collateral estoppel requires that the issues raised in the subsequent action be decided by reference to the previous state court judgment,” which rejected his claims. Id. at 61.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 34) is **APPROVED** and **ADOPTED** in its result; and it is further

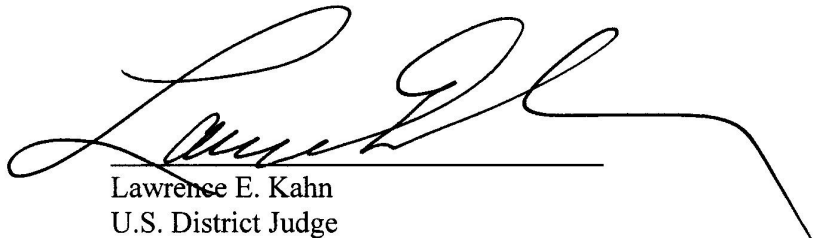
ORDERED, that the Motion to dismiss (Dkt. No. 25) is **GRANTED**; and it is further

ORDERED, that the Complaint (Dkt. No. 1) is **DISMISSED**; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: March 24, 2008
Albany, New York


Lawrence E. Kahn
U.S. District Judge